

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 57880 / May 28, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-12554

In the Matter of

**Michael Sassano, Dogan
Baruh, Robert Okin, and
R. Scott Abry,**

Respondents.

**ORDER MAKING FINDINGS AND
IMPOSING REMEDIAL SANCTIONS
PURSUANT TO SECTION 15(b) OF THE
SECURITIES EXCHANGE ACT OF 1934
AS TO R. SCOTT ABRY**

I.

On January 31, 2007, the Securities and Exchange Commission (“Commission”) instituted public administrative and cease-and-desist proceedings pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”), Sections 15(b)(6) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”), Section 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”), and Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”) against R. Scott Abry (“Abry” or “Respondent”).

II.

In connection with these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Making Findings and Imposing Remedial Sanctions Pursuant to Section 15(b) of the Securities Exchange Act of 1934 as to R. Scott Abry (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Respondent

1. R. Scott Abry, 44, resides in Cos Cob, Connecticut. From 1997 to January 2003, Abry was a Managing Director of CIBC World Markets Corp. ("CIBC"). He served as a branch manager in the Private Client Division ("PCS") from 1995 to January 2003. As a branch manager in the PCS, Abry had supervisory authority for the registered representatives in his branch. In January 2003, when CIBC sold its retail division to Fahnestock and Co., Inc. ("Fahnestock"), Abry remained a branch manager at Fahnestock. In September 2003, Abry resigned from Fahnestock and became a branch manager at another registered broker-dealer in New York. He holds Series 7, 9 and 10 licenses.

Other Relevant Entities

2. CIBC is a New York-based broker-dealer subsidiary of Canadian Imperial Bank of Commerce, a Canadian financial and bank holding company. CIBC, through its CIBC Oppenheimer retail division, serviced high-net-worth individuals, money managers, and other customers, including hedge funds. In January 2003, CIBC sold its Oppenheimer retail division to Fahnestock. During the relevant time period, CIBC was registered with the Commission as both a broker-dealer and an investment adviser. On July 20, 2005, the Commission instituted settled administrative and cease-and-desist proceedings against CIBC, in which CIBC settled to charges that it violated Section 17(a) of the Securities Act, Sections 7(c), 10(b), 11(d), 15(c) and 17(a) of the Exchange Act and Rules 10b-3, 10b-5 and 17a-3 thereunder, as well as Rule 22c-1 as adopted under Section 22(c) of the Investment Company Act and Regulation T promulgated by the Federal Reserve Board regarding the extension of margin credit.

3. Fahnestock was a New York-based broker-dealer which, in January 2003, through its parent holding company Fahnestock Viner Holdings, Inc., acquired CIBC's retail division. After the purchase, Abry and other registered representatives became employees of Fahnestock, with Abry remaining a supervisor. In September 2003, Fahnestock changed its name to Oppenheimer and Co, Inc. ("Oppenheimer"). Oppenheimer is registered with the Commission as both a broker-dealer and an investment adviser.

Summary

4. This matter involves Abry's failure reasonably to supervise certain registered representatives of CIBC and Fahnestock (the "Brokers").

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

5. Between 1998 and September 2003, the Brokers defrauded numerous mutual fund companies and the fund companies' shareholders by utilizing deceptive practices to circumvent the mutual fund companies' restrictions on market timing. On numerous occasions, mutual fund companies rejected market timing customers' trades, and notified the Brokers and the firms that such trading violated the fund companies' prohibitions and harmed the fund companies. The Brokers nevertheless employed deceptive acts and practices to enable their customers to continue timing.

6. Abry failed reasonably to supervise the Brokers and to prevent their violations of the federal securities laws. From August 1999 through September 2003, Abry had supervisory authority for the Brokers, and he was informed of the Brokers' efforts to deceive mutual fund companies in order to facilitate market timing. Despite being alerted that both mutual fund companies and annuity companies objected to the Brokers' deceptive market timing practices, Abry failed reasonably to respond to stop the Brokers' deceptive market timing activity. Abry, therefore, failed reasonably to supervise the Brokers.

The Brokers Utilized Deceptive Trading Practices

7. The Brokers had a large and highly profitable market timing business in which they executed mutual fund orders on behalf of their customers, including market timing hedge funds. The Brokers received numerous communications from mutual fund companies stating that the market timing violated prohibitions on trading set forth in the fund companies' prospectuses and harmed the fund companies; accordingly, many fund companies rejected the Brokers' trades. The Brokers repeatedly ignored these letters and emails. Instead, the Brokers worked with their customers to evade restrictions placed by the mutual fund companies.

8. To continue market timing mutual fund companies that had blocked their customers' trading, the Brokers utilized deceptive practices on behalf of their customers, including: (1) creating new accounts for blocked customer accounts; (2) creating new registered representative identification numbers to disguise timers and their Brokers from mutual fund companies; (3) trading in smaller dollar amounts in order to avoid detection by mutual fund companies; (4) using annuities to market time; and (5) using additional broker-dealer firms that had other trading platforms, such as Charles Schwab & Co., Inc. ("Schwab") and FMR Corp. ("Fidelity").

9. As a result of the conduct described above, the Brokers violated, among other provisions, Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and aided and abetted violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

Abry Failed Reasonably to Supervise the Brokers

10. Abry supervised the Brokers and became aware that the Brokers engaged in deceptive market timing but nevertheless failed to take appropriate action to stop the practices.

11. Abry had become aware that certain mutual fund companies had told the Brokers that their trading harmed the fund companies and their shareholders. He also became aware that, at various times, certain mutual fund companies had threatened to cancel their dealer agreements because of the Brokers' market timing.

12. Abry also became aware the Brokers used deceptive tactics to evade the mutual fund companies' restrictions. For example, Abry and others became aware that the Brokers used the Schwab trading platform to continue to market time mutual fund companies that had blocked the Brokers' customers timing activity.

13. Abry became aware that the Brokers broke up trades to evade mutual fund companies' internal timing monitors, used smaller dollar amounts, multiple accounts and multiple registered representative numbers, and used external trading platforms to conceal trading activity and avoid detection. Abry did not stop the conduct and did not discipline the Brokers.

14. The Brokers also market timed mutual fund companies through variable annuities. Abry failed reasonably to supervise the Brokers' market timing through annuities.

15. As a result of the conduct described above, Abry failed reasonably to supervise the Brokers.

Failure to Supervise

16. Section 15(b)(4)(E) of the Exchange Act provides for the imposition of a sanction against a broker or dealer who "has failed reasonably to supervise, with a view to preventing violations of the securities laws, another person who commits such a violation, if such other person is subject to his supervision." Section 15(b)(6)(A)(i) incorporates by reference Section 15(b)(4)(E) and provides for the imposition of sanctions against persons associated with a broker or dealer.

17. As a result of the conduct described above, Abry, as a branch manager in the PCS group who had supervisory responsibility over the Brokers, failed reasonably to supervise the Brokers with a view to preventing their violations of the federal securities laws. Consequently, Abry failed reasonably to supervise the Brokers under Section 15(b)(6) of the Exchange Act, which incorporates by reference Section 15(b)(4)(E).

Undertakings

18. Ongoing Cooperation by Abry. Abry undertakes to cooperate fully with the Commission in any and all investigations, litigations or other proceedings relating to or arising from the matters described in this Order. In connection with such cooperation, Abry has undertaken:

A. To produce, without service of a notice or subpoena, any and all documents and other information reasonably requested by the Commission's staff;

B. To be interviewed by the Commission's staff at such times as the staff reasonably may request and to appear and testify truthfully and completely without service of a notice or subpoena in such investigations, depositions, hearings or trials as may be requested by the Commission's staff; and

C. In connection with any testimony of Abry to be conducted at deposition, hearing or trial pursuant to a notice or subpoena, to:

- i. Agree that any such notice or subpoena for his appearance and testimony may be served by regular mail on his counsel, Richard D. Marshall, Ropes & Gray LLP, 1211 Avenue of the Americas, New York NY 10036-8704; and
- ii. Agree that any such notice or subpoena for his appearance and testimony in an action pending in a United States District Court may be served, and may require testimony, beyond the territorial limits imposed by the Federal Rules of Civil Procedure or the Commission's Rules of Practice.

IV.

In view of the foregoing, the Commission deems it appropriate, and in the public interest to impose the sanctions agreed to in Respondent Abry's Offer.

Accordingly, pursuant to Section 15(b) of the Exchange Act, it is hereby ORDERED that:

A. Respondent be, and hereby is, suspended from association in a supervisory capacity with any broker or dealer for a period of 12 months, effective on the second Monday following the entry of this Order.

B. Respondent shall pay disgorgement of \$1 and a civil money penalty in the amount of \$125,000 to the Securities and Exchange Commission. Abry shall satisfy this obligation by paying \$62,501 within thirty (30) days of entry of this Order and the remaining \$62,500 by March 2, 2009. Such payments shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies Abry as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to David Stoelting, Senior Trial Counsel, Division of Enforcement, Securities and Exchange Commission, New York Regional Office, 3 World Financial Center, New York, NY 10281.

C. Such civil money penalty may be distributed pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002 ("Fair Fund distribution") by the fair fund established in In the

Matter of Canadian Imperial Holdings, Inc. and CIBC World Markets Corp., AP File No. 3-11987. Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that he shall not, after offset or reduction in any Related Investor Action based on Respondent's payment of disgorgement in this action, argue that he is entitled to, nor shall he further benefit by offset or reduction of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that he shall within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Florence E. Harmon
Acting Secretary